HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the Case.

W.P.No.800 m.s of 2004
Biddheshwar Pande

Vs
Swami Atma Prakash
and another.

Approved for reporting

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Not approved for reporting

Date of decision 27.9.2004

Initial of Judge

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 800 (M/S) of 2004

Siddheshwar Pande ……. Petitioner

Versus

Swami Atma Prakash
and another. ……. Respondent.

……..

Hon. Rajesh Tadnon, J.

By the present writ petition the petitioner has prayed for a writ of certiorari praying for the quashing of the order dated 9.8.2004 passed by the respondent no. 2 in Revision No. 9 of 1999.

Briefly stated, a suit was filed in the Court of Judge Small Cause Court, Haridwar by the plaintiff respondents praying for eviction of the petitioner on the ground of arrers of rent for the period between 01.09.1991 to 15.06.1993 at the rate of Rs. 200/- per month alongwith 10% water tax.

The plaintiff-respondent has sent a notice claiming the rent from 01.08.1991 to 30.04.1993 amounting to Rs.4200/-.

The defendant had filed a written statement and has denied that the rent was Rs. 200/- per month. It was stated that the agreed rent was Rs. 125/- including taxes. He has prayed for depositing the rent from 1st March, 1993 to 31st of July 1993. He was permitted to deposit the same amounting to Rs. 625/-.

The defendant has also stated in the written statement that he has paid the rent to the plaintiff and he has also sent the rent by money order regarding March, April and May, 1993 to the extent of Rs. 375/- and the charge of electricity amount to Rs. 101. In Paragraphs 16 and 17 of the

Written statement, it has been stated that for the months of April, May and June, 1993 the rent was sent to the extent of Rs. 500/-.

So far as the rent from 1991 is concerned, the defendant has stated that he was prating the rent to the plaintiff per month and the rent upto 28-02.1993 was paid to the plaintiff.

Judge Small Cause Court has recorded a finding that the rate of rent is Rs. 125/- per month. So far as arrears are concerned, a finding was recorded that the defendant has paid the amount under order 15 Rule 5 C.P. C. and the finding was recorded that no rent was due. So far the other issues are concerned, the trial Court has decided the issues against the plaintiff. The plaintiff has preferred a revision before the District Judge. The learned District Judge has recorded a finding that the rate of rtent ws fixed as Rs. 125/- per month. So far as default is concerned the revisional Court has come to the conclusion that the defendant has been defaulter. The revisional Court has also recorded a finding tht the defendant has not paid the rent from 1.08.1991 and as such he is liable to be evicted from the premises in dispute. The petitioner has filed the present writ petition challenging the order passed by the revisional Court on the following grounds:

1. There has been no default, as the money order sent by the defendant has not been taken into consideration.

2. The revisional Court was not competent to enter into the re-assessment of evidence under section 25 of the Provisional Small Cause Court Act.

Arrears of rent

The plaint case of the landlord is that the defendant is in arrears from 01.08.1991 to 30.04.1993 and a demand of Rs. 4200/- was sent. The petitioner in his written statement has stated that the money order was sent before 28the February, 1993, which was sent by money order. The defendant could not produce any documentary evidence that the rent

before 28th February, 1993 was ever sent to the plaintiff. Further it has been admitted by the defendant that the money order ws sent only for the month of Feb., March and April of 1993 and no money order was sent between 1991 to 1993.

Paragraphs 16 and 17 of the written statement are being quoted below:-

> ''यह कि इसके पष्चात प्रतिवादी उत्तरदाता के पुनः वादी के पास बमाह मार्च –अप्रैल व मई 1993 ई0 का किराया राषि तादादी मुबलिग 375/–रुपये (तीन सौ पिचहत्तर) रुपये कि जिस राषि में समस्त कर व पानी व्यय सम्मिलित है, तथा इसी अवधि का विधुत व्यय सब मीटर रीडिग अनुसार तादादी मुबलिग 101/–रुपये (एक सौ एक) रुपये जुमला मुबलिग 475/–रुपये (चार सौ छियेत्तर रुपये) बजरिये मनीआर्डर भेजे थे, और उस राषि को भी स्वामी आत्म प्रकाष यति वादी ने प्राप्त न करके वापिस लौटा दिया था।''
>
> ''यह कि इसके उपरांत प्रतिवादी उत्तरदाता ने पुनः वादी के पास मार्च/अप्रैल/मई व जून –1993 ई0 का किराया राषि तादादी मुबलिग 500 रुपये (पॉच सौ रुप्ये) कि जिस राषि में समस्त कर व पानी व्यय सम्मिलित है तथा इसी अवधि का विधुत व्यय सब मीटर रीडिंग अनुसार तादादी मुबलिग 641/रुपये (छः सौ इकतालिस रुपये) बजरिये मनीआर्डर भेजे थे और उस राषि को स्वामी आत्म प्रकाष यति वादी ने प्राप्त न करके वापिस लौटा दिया था।''

In view of the aforesaid fact, the plaintiff has successfully proved tha the defendant is a defaulter within the meaning of Section 20 (a) of U.P.Act No. XIII of 1972.

Interference under section 25 of the Provincial Small Cause Court Act:

Counsel for the plaintiff-respondent has submitted that the revisional court has no right to interfere with the findings of facts recorded by the trial Court. Here in the present case the revisional Court has considered the default of the defendant as contemplated under section 20(1) (a) of the U.P.Act No. XIII of 1972.

Admittedly the defendant-petitioner has failed to give any proof of the payment of the rent.

In Madan Mohan and another Vs. Krishan Kumar Sood reported in Supreme Court and Full Bench Rent Cases, 1993, the Apex Court has observed as under:

> "In such cases it will be advisable if the Controller while passing the order of eviction on the ground specified in clause (i) of sub-section (2) of Section 14 of the Act specifies the "amount due" till the date of the order and not merely leave it to the parties to contest it after passing of the order of eviction as to what was the amount due.
>
> Surely the Rent Control Acts, no doubt, are measures to protect tenants from eviction except on certain specified grounds if found established. Once the grounds are made out and subject to any further condition which may be provided in the Act, the tenants would suffer ejectment. Again the protection given in the Acts is not to give licence for continuous litigation and bad blood.
>
> Surely the legislature which made the act could not have envisaged that after the parties fininsh of the one round of litigation for recovery of the rent which accrued *pendente lite*. Whatever, protection Rent Acts give they do not give blanket protection for "non-payment of rent". This basic minimum has to be complied with by the tenants. Rent Acts do not contemplate that if one takes a house on rent, he can continue to enjoy the same without payment of rent."

The above case Madan Mohan (supra) has been followed in the case of Mohd. Siddiqui Vs. IInd Additional District Judge, Unnao and others reported in Allahabad Rent Cases, 1997(2). It has been held as below:

> "21. As pointed out by the Apex Court in its decision in the case of Madan Mohan and another Vs. Mohan Kumar Sood, reported in 1993(1) JT 162: 1993 SCFBRC 133 (SC), whatever protection the Rent Acts give they do not give blanket protection for non-payment of rent. This basis minimum has to be complied with by the tenants. The Rent Acts do not contemplate that if one takes a house on rent he can continue to enjoy the same without payment of rent.
>
> 22. In the aforesaid view of the matter, the petitioner once having been informed that he had fallen in arrears in regard to payment to rent for more that the requisite period, was duty bound to clear the arrears if any tendering the same to the landlord or deposit the same in Court as provided under the Act, if he wanted the protection of the Act. He could not just ignore the notice on the ground that it contained an inflated demand and on that ground continue to enjoy the accommodation let out to him without payment of rent, it may be observed that once after receiving the notice informing the tenant that he has been defaulting in payment of rent for the prescribed period and he may be evicted, the tenant

in order to save his default, if there be any, must pay the rent due according to him, to the landlord or deposit the same in accordance with the provisions of the Act otherwise he has to face the consequence. This it seems to me is the underlying policy of the Act and amply safeguards the interests of both the landlord and the tenant, maintaining a just balance between their competing interests.

23…….In the present case, the landlord had come up with the definite allegation that the tenant was in arrears of rent for more than the prescribed period and no rent had been paid by him for the period 1.11.1974 to 30.05.1978. In view of the assertion of the landlord on oath in this regard, the onus of proof stood shifted on the tenant to show payment or rent as claimed. The trial Court recorded a clear and categorical finding to the effect that the defendant has failed to prove the payment of rent for the period prior to 1.4.1978. This finding stands affirmed in revision. In face of the aforesaid finding based on an appraisal of evidence on the record which finding does not appear to suffer from any such infirmity which may justify any interference therein, while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India, there could be no impediment in the grant of the decree for ejectment against the petitioner as prayed for specially when the rent for the period subsequent to 1.4.1975 which was admittedly due was not tendered or paid within the time prescribed."

Since the respondent has proved that the defendant was in arrears of rent, therefore, the jurisdiction has been rightly exercised.

The revisional Court can always examine the question pertaining to legal aspect of the matter and the restrictions will not come in the way of the plaintiff to claim the decree for eviction in case he has proved that the defendant is in arrears of rent within the meaning of Section 20(1)(a) of the Act.

The Division Bench of the Allahabad High Court in the case of Laxmi Kishore and another Vs. Har Prasad Shukla reported in A.R.C. 1981 page 545 specifically provides as under:

"19. If it finds that there is no evidence to sustain a finding on a particular issue of fact, it can ignore that finding. Same will be the case where the finding is based only on inadmissible evidence.

In such cases, the Court will be justified in deciding the question of fact itself, because the evidence is all one way. No assessment is needed. The Court can also decide the revision if only a question of law or some preliminary point of law, viz.. validity of notice, is sufficient for its decision.

20.But, if it finds that a particular finding of fact is vitiated by an error of law, it has power to pass such order as the justice of the case requires, but it has no jurisdiction to reassess or reappraise the evidence in order to determine an issue of fact for itself, if it cannot dispose of case adequately without a finding on a particular issue of fact, it should send the case back after laying down proper guidelines, it cannot inter into the evidence, assess it and determine an issue of fact."

As will appear from the facts on record that the default has been fully established by the defendant for more than four months, therefore there cannot be any other conclusion except which has been recorded by the revisional Court to the following effect:

''इस तरह से पत्रावली पर उपलब्ध साक्ष्य के आधर पर यह स्पष्ट हो जाता है कि प्रतिवादी फरवरी 93 तक का किराया वादी को दिये जाने का थ्य साबित करने में असफल रहा है। यहॉ तक की अगस्त 91 से फरवीर 93 तक का बिजली मीटर रीडिगं के अनुसार यदि कोई बिजली चार्जेच प्रतिवादी के कथनानुसार अदा किया था तो उसके सम्बन्ध में प्रतिवादी के पास मीटर रीडिंग होती ताकि वह यह तथ्य साबित करता कि मीटर रीडिंग के अनुसार उसने प्रतिमाह कितने रूप्ये बिजली चार्जेच के अदा किये है।

इस तरह से पत्रावली पर उपलब्ध साक्ष्य से यह स्प ट हो जाता है कि प्रतिवादी प्रष्नगत सम्पत्ति में 125/रूपये प्रतिमहाह की दर से किरायेदार था और किराये के अतिरक्त जलकर और समस्त टैक्स देने की जिम्मेदारी प्रतिवादी की थी तथा किराये की धनराषि में समस्त कर सम्मिलित नही थे। पत्रावली के अवलोकन से यह स्पष्ट जाता है कि प्रतिवादी के उपर 1.8.1991 से किराया मय समस्त कर बकाया है और प्रतिवादी द्वारा किराया अदा करने में डिफाल्ट एवं चूक की गयी।''

<u>Interference under Article 226/227 of Constitution of India:</u>

The jurisdiction under article 226/227 of the Constitution of India is limited and High Court cannot act like a Court of appeal so as to interfere with the findings of the revisional authority.

The Apex Court in the case of Shyam Lal Vs. Rasool Ahmed (dead) by L.Rs. reported in (2002) 9 SCC 499 has observed as under:

> "Lastly, it was submitted that the District Court exercising revisional jurisdiction did not have jurisdiction to interfere with the findings of fact arrived at by the trial Court. This submission is also liable to be rejected. Firstly, it was a revision preferred under section 25 of the Provincial Small Cause Court Act, the jurisdiction whereunder is not so limited as it may be under section 115 of the Code of Civil Procedure. Secondly, as we have already pointed out the learned District Judge had assigned convincing reason for arriving at a finding different from the one arrived at by the trial Court and on the material available on record, the District Judge though exercising revisional jurisdiction was fully justified in interfering with findings of fact arrived at by the trial Court which overlooked the weighty relevant material available on record and clinching the issue."

Relying upon the earlier judgment in the case of Surya Dev Rai Vs. Ram Chander, SCC 2003 Vol. 6 page 675, the Apex Court has held in the case of Ranjit Singh Vs. Ravi Prakash (2004) 3 Supreme Court Cases 682 as below:

> "In Surya Dev Rai Vs. Ram Chander Rai this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error, which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form tow opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Devi Rai that the jurisdiction was not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that- " considering the evidence on the record carefully" it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like an appeal Court which was not permissible for it to do under Article 226 or 227 of the Constitution."

There being no evidence on record to prove with regard to payment of rent prior to 1993, the writ jurisdiction, therefore, under Article 226 and 227 of the Constitution of India cannot be invoked to give relief to a defaulter.

In view of the aforesaid, writ petition lacks merit and is hereby dismissed. There will be no order as to costs.

However, time is granted by 31st of December, 2004 to vacate the premises provide and undertaking is given in the following terms by the petitioners:

(i) to vacate to premises upto 31st of December 2004
(ii) to pay entire damages for use and occupation upto 31st December, 2004 by 30th October, 2004.
(iii) The undertaking shall be furnished by 15th of October, 2004.
(iv) In case of default the decree for eviction shall be executed forthwith.

September 27 ,2004 **(Rajesh Tandon, J.)**

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